IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.5876 of 2007

Date of Decision: November 21, 2007

Surjit Kumar and another .....Petitioners

Versus

Lehmber Singh and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.SS Siao, Advocate for the petitioners.

Mr.HS Thiara, Advocate for the caveator-respondents.

S. D. ANAND, J.

1. The facts, having relevant bearing on the disposal of the petition, in the first instance.

2. The plaintiff-respondent Jaswinder Singh did not step into the witness box, as his own witness in the first instance and proceeded to examine certain other witnesses. On their failure to conclude evidence, the petitioners' evidence was closed by the learned Trial Court vide order dated 1.8.2007. The plaintiff-petitioners challenged that order by filing Civil Revision No.4393 of 2007. That petition came to be allowed by Hon'ble Rajesh Bindal, J. in limine vide order dated 28.8.2007. Thereafter, plaintiff-respondent Jaswinder Singh tendered his affidavit into evidence in lieu of the Examination-in-Chief. It is at that stage that the defendant-petitioners filed an application to the effect that plaintiff-respondent Jaswinder Singh could not be allowed to appear as his own witness as he failed to examine himself at the very outset and he had not obtained the

leave of the Court to examine himself , as his own witness, at a later point of time. It is the rejection of that application which is under challenge before this Court.

3. Learned counsel for the petitioners argued that though this Court (in Civil revision No.4393 of 2007) did allow the plaintiff-respondents one opportunity to conclude the evidence, it would not ipso facto amount to exemption from the rigorous provisions of Order 18 Rule 3A of the Code of Civil Procedure which require that the plaintiffs must step into the witness box before examining other witnesses. It was also argued that the plaintiff-respondents nowhere made a mention of the fact in the previous petition that they had not already stepped into the witness box before their evidence came to be closed.

4. A copy of the grounds of petition in Civil Revision No.4393 of 2007 has been shown to the Court. A perusal thereof falsifies the factual averments made on behalf of the petitioners. It would be appropriate to quote hereunder the averments made in the course of paras 12, 13, 15 and 16:

> "12. That on 1.8.2007, two PWs were present and examined and the other summoned witnesses namely Tarsem Singh Matharoo, Advocate, Sat Pal Deed Writer and plaintiff Jaswinder Singh himself could not be examined as the plaintiff Jaswinder Singh was to be examined who was in Canada and could be reach in India.
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> 13. That due to unavoidable circumstances the statement of Jaswinder Singh plaintiff could not be recorded and two summoned witnesses presence could not be procured ,

but the ld. Court below instead of procuring the presence of the summoned witnesses, closed the evidence of the plaintiff by order dated 1.8.07. Copy of the order is annexed as Annexure P.1.

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15. That the petitioner has to examine Jaswinder Singh one of the plaintiff as his own witness and he was to be examined on 1.8.07 but due to unavoidable circumstances, he could not come to India on the fixed date for giving his statement and on that date other two witnesses who were summoned through court was also not present.

16. That the plaintiff has to examine only three witnesses including the plaintiff himself and tender into evidence the documentary evidence already on the file or in the custody of the petitioner, but due to this order, Annexure P.1, the plaintiff will suffer loss and irreparable loss."

5. Apart therefrom, in the relief clause, the plaintiff-respondents (petitioners in Civil Revision No.4393 of 2007) applied for the setting aside of the order regarding closure of evidence and sought two opportunities to lead their evidence for examination of witnesses namely Tarsem Singh Matharoo, Advocate, Sat Pal, Deed Writer and one of the plaintiffs namely Jaswinder Singh, as his own witness, in the interest of justice.

6. It is obviously on consideration of the entire averments that Hon'ble Rajesh Bindal, J. allowed that petition in limine. Thus, the opportunity granted by this Court in that matter would be inferred to include the opportunity to the plaintiff-respondents to examine Jaswinder Singh,

plaintiff-respondent as well.

7. On facts, it is conceded that the affidavit of plaintiff-respondents has been tendered into evidence and they have already been cross-examined by one defendant, other than the present petitioners.

8. The reliance placed by the learned counsel for the petitioners upon **Gurmail Chand Versus Ashok Verma**, 2004(3) RCR (Civil) 164 is mis-conceived. That ruling rendered by a Single Bench of this Court does not hold the fort in view of the Division Bench ruling rendered in **Pravesh Kumari and others Vs. Rishi Prasad and others**, A.I.R. 1986 Patna 315. In the latter ruling, it was observed as under:

> "Order 18, R.3A is directory and not mandatory. But that does not mean that R.3A need not be observed. It must be observed. But its non-observance in all cases should not lead to the extreme penalty of expunging the evidence which had already been recorded. Therefore, where the plaintiff without obtaining leave of the court under R.3A was examined as a witness at a later stage after the witnesses on his behalf had already been examined and deposed in support of his case and proved number of documents, his evidence along with the exhibits which he had proved should not be expunged for non-observance of R.3A."

9. In the light of foregoing discussion, the petition is held to be plainly bereft of merit and is ordered to be dismissed. However, it is made clear that the plaintiff-respondents shall be entitled to only one adjournment of a shorter duration to conclude their evidence.

(S. D. ANAND)
JUDGE

November 21, 2007
SRM

Note: Whether referred to reporter ? Yes/No